

REMARKS

Claims 90-94 are pending in the present application.

It is respectfully submitted that the present amendment presents no new issues or new matter and places this case in condition for allowance. Reconsideration of the application in view of the above amendments and the following remarks is requested.

I. The Rejection of Claim 94 under 35 U.S.C. § 112, First Paragraph

Claim 94 was rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Office Action stated:

Applicants have amended claim 94 to recite that trichodene synthase is obtained from *Fusarium venenatum* strain NRRL 30747. However, the requirements of CFR 1.801- 1.809 have not been properly met and therefore, the rejection of claim 94 under 35 USC 112, first paragraph, for lack of written description regarding a deposit requirement under 37 CFR 1.801-1.809 has not been overcome. Specifically, the provided statement under 37 CFR 1.808 is directed to NRRL B-30029 which according to the instant specification has been deposited May 1998. NRRL B-30029 is described in the specification as *E. coli* DH5a pTri5. Furthermore, under the Budapest Treaty, the deposit must be referred to in the body of the specification and be identified by accession number, date of deposit, name and address of the depository and the complete taxonomic description. The specification has not been amended to add the description or accession number or date of deposit of the NRRL 30747.

Applicants have amended the specification on page 63 to add the description, accession number, and date of deposit of the NRRL 30747. Attached is a replacement page.

Applicants also enclose a Statement under 37 C.F.R. § 1.808 that NRRL 30747 was deposited under the Budapest Treaty and all restrictions will be removed upon the granting of the U.S. patent.

For the foregoing reason, Applicants submit that this rejection under 35 U.S.C. § 112 has been overcome and respectfully request withdrawal of the rejection.

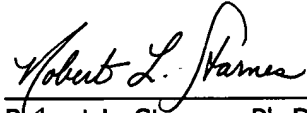
II. Conclusion

In view of the above, it is respectfully submitted that all claims are in condition for

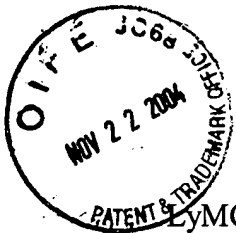
allowance. Early action to that end is respectfully requested. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

Date: November 17, 2004

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert L. Starnes", positioned above a horizontal line.

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LyMC 1A <2
LyMC 1B <2
LyMC 1C <2

*Detection limit 2ppm.

Deposit of Biological Material

The following biological material has been deposited under the terms of the Budapest
5 Treaty with the Agricultural Research Service Patent Culture Collection, Northern Regional
Research Center (NRRL), Peoria, Illinois, and given the following accession numbers:

Deposit	Accession Number	Date of Deposit
<i>E. coli</i> DH5 α pTri5	NRRL B-30029	May 6, 1998
<i>Fusarium venenatum</i>	NRRL 30747	May 11, 2004

10 The strain has been deposited under conditions that assure that access to the culture will
be available during the pendency of this patent application to one determined by the
Commissioner of Patents and Trademarks to be entitled thereto under 37 C.F.R. §1.14 and 35
U.S.C. §122. The deposit represents a substantially pure culture of the deposited strain. The
deposit is available as required by foreign patent laws in countries wherein counterparts of the
15 subject application, or its progeny are filed. However, it should be understood that the
availability of a deposit does not constitute a license to practice the subject invention in
derogation of patent rights granted by governmental action.

20 The invention described and claimed herein is not to be limited in scope by the specific
embodiments herein disclosed, since these embodiments are intended as illustrations of several
aspects of the invention. Any equivalent embodiments are intended to be within the scope of this
invention. Indeed, various modifications of the invention in addition to those shown and
described herein will become apparent to those skilled in the art from the foregoing description.
Such modifications are also intended to fall within the scope of the appended claims.

25 Various references are cited herein, the disclosures of which are incorporated by
reference in their entireties.